IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.97 OF 2007
WITH
CIVIL APPLICATION NO.144 OF 2007

Bhupendra Dhanji Gala.
aged about 46 yrs.Occ.:Business,
Shop Nos. 6 to 10,
Churchgate Subway,
Mumbai 400 020. ..Appellant.

V/s.

The Municipal Corporation of Gr.
Mumbai. ..Respondent.

WITH

APPEAL FROM ORDER NO.98 OF 2007
WITH
CIVIL APPLICATION NO.145 OF 2007

Prem w/o Madanmohan Nandlal Vij,
aged about 56 yrs.Occ.:Business,
24/36, Qurunagar, Four Bunglow,
Jayprakash Road, Andheri(W),
Mumbai 400 058. ..Appellant.

V/s.

The Municipal Corporation of Gr.
Mumbai. ..Respondent.

Mr.A.M.Saraogi for appellants in both the appeals.

Mrs. Geeta Joglekar for B.M.C.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 12, 2007.

P.C. :

1. Heard counsel for the parties.

2. The issue raised in these appeals is whether the arrangement under the tender of 1991 was to be a tenure licence or it is optional for the licensee alone to walk out of that arrangement. The question has been rightly answered by the trial Court with reference to the Clauses 6, 7, 24, 32 and 35 of the licence agreement executed between the appellants and the Corporation. Clause 6 of that agreement makes it amply clear that it is for the licensor (Corporation), in the first place to exercise option in favour of the renewal of the licence after expiry of initial 10 years period of licence. It is only when the Corporation was to exercise option of renewal, licensee(appellant) would get choice of continuing to occupy the premises on the terms referred to in the agreement and not otherwise. Clause 23 of the agreement reinforces the position that the original arrangement arrived at between the Corporation and the appellants was a tenure licence- which provides that the agreement will remain in force for the period commencing from 2/1/1991 to 31/12/2001. In terms of the agreement, the period was extended subsequently up to 31st December, 2006 as per communication dated 15th October, 2004.

3. In other words, it is not open to the

appellants to now contend that they have a right to remain in possession of the disputed premises for any number of years on paying consideration referred to in the agreement executed between the parties, notwithstanding the decision of the Corporation not to renew the licence period. Any other view would prejudice the public exchequer of denuding the Corporation of prevailing fair returns in respect of the premises.

4. To get over this position, counsel for the appellants would contend that the Court should not consider the matter with reference to the articles of agreement alone, but should also consider the terms of tender invitation. According to the appellants the tender invitation makes no provision for fixed term licence. It is not possible to accept this submission. The appellants have executed written articles of agreement and the terms thereof have been continued and acted from time to time, which operated only till 31st December, 2006. Having accepted that arrangement without any demur; and as the agreement was culmination of the understanding arrived at between the parties, it is not open to contend to the contrary.

5. It was next contended that in terms of clause 37 of the agreement, all issues or disputes between the appellants and Corporation were required to be adjudicated by the Additional Municipal Commissioner, whose decision was final and binding on both licensor and licensee. It was suggested that the issue as to whether the appellants have a right to continue to remain in possession of the disputed premises may be allowed to be considered by the Additional Municipal Commissioner. I see no substance in this submission. The appellants having approached the Civil Court and invited decision from the trial Court on that issue and also reiterated the same contention before this Court, which has been negatived, it is not now open for the appellants to go back to the Additional Municipal Commissioner for a contrary view to be expressed by that authority. Perhaps, this submission is an attempt to gain time. Suffice it to observe that there is no merit in these appeals. The appeals therefore, should fail. The same are dismissed.

6. At this stage, counsel for the appellants submits that the premises are occupied by the appellants for almost over 15 years. The appellants may be permitted to remain in possession of the

premises till the tender process in respect of the suit premises being Shop Nos.1 to 10, is undertaken and completed by the Corporation. Counsel for the appellants further submits that the appellants may also be permitted to participate in the tender process in respect of the suit premises being shop Nos. 1 to 10. Counsel for the Corporation on instructions submits that the Corporation may accept this request, provided the appellants were to pay the entire outstanding dues as of now (running into couple of lakhs), and agree to pay future compensation as per the terms provided in the agreement between the parties. Besides, the appellants should give usual undertaking before this Court that they shall vacate the suit premises as and when demand is made by the Corporation, in any case by 15th of April, 2007, as the Corporation intends to complete the tender process by 31st March, 2007.

7. Accordingly, indulgence is shown to the appellants by allowing them to occupy the premises till 15th April, 2007 or till the completion of the tender process and requisition is given by the Corporation to vacate the suit premises on the appointed date, whichever is earlier. The appellants to file usual undertaking before this Court within

one week from today, wherein they will specifically undertake to hand over vacant and peaceful possession of the disputed premises within the specified time and also to pay the entire outstanding dues, if any, to the Corporation within two weeks from today.

8. The appellants will be free to participate in the prospective tender process in respect of the suit premises subject to payment of outstanding dues; and their bid will be considered on its own merits in accordance with the law.

9. If the appellants want to dispute the correctness of the claim of outstanding dues of the Corporation, the appellants shall first pay the entire dues within specified time under protest. Thereafter, they may make reference to the Additional Municipal Commissioner for resolution of the said dispute, who in turn may decide the issue regarding excessive demand on its own merit in accordance with law.

10. It is made clear that the pendency of proposed dispute regarding correctness of the claim of outstanding dues, in no way will preclude the Corporation to initiate and complete tender process

and would not absolve the appellants to vacate the suit premises as per time specified in the undertaking given before this Court.

11. Appeals as well as respective civil applications disposed of on the above terms.